

REMARKS/ARGUMENTS

Applicant thanks the Examiner for the thorough consideration given the present application.

Claims 1, 5-14 and 17 are pending. Claims 1, 9 and 14 are independent. Claims 1 and 14 are amended. No new matter is involved. Claims 2-4, 15 and 16 have been canceled.

Accordingly, reconsideration of the present application, as amended, is respectfully requested.

Initially, Applicant notes that there are inconsistencies between the content of the Office Action Summary, Form PTO-326, and the body of the outstanding Office Action.

The Office Action Summary indicates that claims 12 and 14 are rejected and that claim 13 is allowed. The body of the rejection states, on page 2, that claims 12-14 are rejected, yet there is no substantive rejection of claim 13 made on pages 2-6 of the Office Action.

The Office Action Summary also states that claim 10 is allowed. Paragraph 1 of the Office Action objects to claim 10. This is clearly inconsistent.

Clarification is respectfully requested.

Allowed Claims

Applicant acknowledges with appreciation the allowance of claims 9 and 10, despite the fact that claim 10 is also objected to. Applicant respectfully submits that the objection to claim 10 is improper, for reasons stated below, and should be withdrawn. Clarification is respectfully requested.

Allowable Subject Matter

Applicant acknowledges with appreciation the indication of allowable subject matter in claim 13. Applicant respectfully submits that there is no substantive rejection of claim 13 of record, contrary to paragraph 2 of the last Office Action.

Entry of Amendments

Applicant respectfully submits that entry of these amendments to claims 1 and 14 is proper because, they reduce the number of claims in issue, combine the subject matter of claim 4 into claim 1, thereby not adding any new issues for consideration or search, and amend claims 1 and 14 by reciting a feature that has already been searched. Claims 1 and 14 recite a detection of content of the audio source and a determination of usable audio menus based on the audio source content information. Basis for this language is found throughout Applicant's original disclosure including, for example, Fig. 4 and

the portions of the specification which explain Fig. 4. Moreover, the amendments to claims 1 and 14 are believed to place those claims in condition for allowance.

Additionally, because the rejection was prematurely made final, for reasons discussed below, this amendment should be entered as a matter of right.

Furthermore, because of the inconsistencies in the Office Action, Applicant respectfully submits that it was not proper to make this Office Action final and that the finality should be withdrawn, thereby permitting entry of the amendments as a matter of right.

Claim Objection

Claim 10 is objected to because it currently depends from claim 1 whereas it was originally filed as depending from claim 9. Applicant respectfully traverses this objection.

While claim 10, as originally filed, depended from claim 9, claim 10 was amended in the Amendment filed on October 2, 2003, to depend from claim 1.

The next Office Action, mailed December 5, 2003, did not object to claim 10 depending from claim 1.

Applicant's Amendment, filed on April 1, 2004 in response to the December 5, 2003 Office Action, did not change claim 10, i.e., claim 10 remained the same as it was in the Amendment filed on October 2, 2004.

Applicant's Amendment filed April 1, 2004 did not serve as the basis for this new objection. Because of this fact, Applicant's Amendment did not necessitate this new ground of objection, which is essentially the same as a new ground of rejection under 35 U.S.C. §112, second paragraph. As a result, the finality of the outstanding Office Action is premature and must be withdrawn.

Moreover, claim 10 in the April 1, 2004 Amendment under 37 CFR 1.111 was actually "previously presented" as depending from claim 1 in the previous Amendment of October 23, 2004. Accordingly, this objection is without merit and should be withdrawn.

Furthermore, this Amendment is, effectively, a response under 37 CFR §1.111 and the claim amendments herein should be entered as a matter of right.

Claim Rejections Under 35 U.S.C. §102 and 103

Claims 1, 4-8, 11, 12-14 and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,631,850 to Tanaka et al. (hereinafter, "Tanaka") in view of U.S. Patent No. 5,042,070 to Linna et al. (hereinafter,

"Linna") and further in view of the admitted prior art of Fig. 1. These rejections, insofar as they pertain to the presently pending claims, are respectfully traversed.

Initially, it is noted that this rejection states that claim 13 is rejected, but no substantive rejection of claim 13 on the merits is found in the body of this rejection. Applicant respectfully requests clarification of this matter.

While not conceding the appropriateness of the rejections of the claims, but merely to expedite prosecution of the instant application, claim 4 is canceled, independent claim 1 is amended to include subject matter formerly recited in claim 4, and claim 1 is amended to recite a combination of features including a determination of usable audio menus based on audio source content information.

Independent claim 14 is amended to recite a combination of features including means for determining usable audio menus based on audio source content information.

It is respectfully submitted that the combinations of elements and steps set forth in claims 1 and 14 are not disclosed by or made obvious over the applied prior art of record, including Tanaka et al. or Linna et al., or Fig. 1.

None of the applied art generates usable menus on the content of the audio source.

For at least the foregoing reasons, the invention as recited in the independent claims and their dependent claims (due to their dependency) is patentable over the applied prior art of record, including Tanaka et al. and Linna et al. and Fig. 1. Accordingly, this rejection of claims 1, 4-8, 12-14 and 17 under 35 U.S.C. §103(a) should be withdrawn.

CONCLUSION

For the foregoing reasons and in view of the above amendments, Applicant respectfully requests the Examiner to reconsider and withdraw all of the objections and rejections of record, and earnestly solicits an early issuance of a Notice of Allowance.

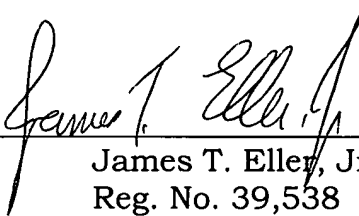
Should there be any outstanding matters which need to be resolved in the present application, the Examiner is respectfully requested to contact Robert J. Webster, Registration No. 46,472, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicant(s) respectfully petition(s) for a one (1) month extension of time for filing a reply in connection with the present application, and the required fee of \$110.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

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